

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>GJ SCORES, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR</p>	<p>Docket No.: 50274</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 24, 2009 Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Eldon E. Silverman, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2007.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Personal Property located at 2445 F 3/8 Road, Grand Junction, Colorado
(Mesa County Schedule No. 03122-50)
(DPT File Numbers 39-08-002 and 39-08-003)**

The subject property consists of personal property used in the operation of a bowling center. The center includes a 36-lane bowling alley, billiards area, arcade games, and restaurant.

Petitioner filed an abatement/refund petition for tax year 2007, due to an overvaluation of its equipment with the Mesa County Board of Commissioners, who granted the petition. The petition was forwarded to Respondent. Respondent denied the petition on the grounds that the Mesa County Assessor’s best information available (BIA) valuation was “based on research of a variety of data sources and the personal property of comparable businesses,” and was not “arbitrary or capricious.” On July 16, 2008, Petitioner filed an appeal of Respondent’s denial with the Board. On February 5 2009, Respondent filed a Motion to Dismiss the petition.

Respondent's witness, Mr. Steve Henderson, Personal Property Appraiser with the Mesa County Assessor's office testified that a personal property declarations were sent in January 2006 and January 2007. Mr. Henderson indicated that if the declaration was not returned, that it was assumed to have been received by Petitioner. Assessor's file notes indicate repeated requests by phone in 2007 (June 11th, 22nd, 25th, and 27th of 2007), and on-site audits on June 1, 2006 and October 15, 2007, were made in an attempt to obtain reliable data. At the time of the June audit, Respondent's witness was able to inventory personal property in all but the security areas. Mr. Henderson reported that he attempted to get actual cost information for the VIA brand bowling alley equipment from the local representative, Ron Hodgen, who was also the manager and part owner of the subject in 2006 and part of 2007. Mr. Henderson reported that he received no response from Mr. Hodgen.

Mr. Henderson relied on a state-approved cost estimating service, *Marshall Valuation Service*, to derive a market-adjusted cost value for the subject property. Mr. Henderson also relied on information from other businesses in the area as well as web site information to confirm the appropriate value for the subject. While Mr. Henderson regarded the equipment as above average, he lowered the quality classification for tax year 2006, and therefore lowered the value, to reflect a first use exemption since it was unknown as to whether all of the property was in operation January 1, 2006. As of January 1, 2007 the business was in operation. Under CRS section 39-3-118.5:

For property tax years commencing on and after January 1, 1996, business personal property shall be exempt from the levy and collection of property tax until such business personal property is first used in the business after acquisition.

In 2007, the Mesa County Assessor sent out a Notice of Value (NOV) indicating a value for the subject personal property of \$2,265,564.00. On July 17, 2007, the Mesa County Assessor sent a Special Notice of Value (SNOV) indicating a value for the subject personal property at \$2,858,974.00. Mr. Henderson testified the increase in value from the NOV to the SNOV was due to omitted property.

Petitioner contends that the BIA valuation was excessive and arbitrary and should be reduced. Petitioner's witness, Mr. William Steele of GJ Scores, LLC testified that Ron Hodgen and Lorna DeVinney were responsible for operation of GJ Scores during part of the 2007 tax year. Both Hodgen and DeVinney have since been dismissed from their positions and did not testify. Mr. Steele did not deny that Petitioner had failed to submit a declaration for tax year 2007, nor was a protest filed prior to his filing of the abatement petition.

Petitioner also contends that the increase in value from the 2006 NOV to the 2007 SNOV was not based upon omitted property. Petitioner contends there was an increase in valuation because Mr. Henderson claimed to give a break in valuation in 2006; and that the Mesa County Assessor was aware of all of the personal property in 2006.

According to *Property Tax Administrator v. Production Geophysical Services Inc.*, 860 P.2d 514, 519 (Colo. 1993):

When the taxpayer fails to return the information required by the personal property schedule, the assessor still must determine the value of the taxpayer's property . . . using the best information available to him or her. If the taxpayer believes that the valuation has been made in error, it must then file a protest in accordance with the statutory procedures set forth in section 39-5-122(2). If the taxpayer neglects to avail itself of the procedure, the assessor's BIA valuation is presumed to be accurate and becomes the final valuation.

The Board is convinced that adequate data was provided to support that the NOV for 2007 had been sent, with no conclusive evidence provided by Petitioner to the contrary.

“A BIA valuation is not an arbitrary valuation, an excessive valuation, or a penalty imposed upon the taxpayer.” *5 Assessor's Reference Library: Personal Property Manual* 3.29 (2006). The Board is convinced that the value assigned in the 2007 NOV by the Mesa County Assessor had a reasonable basis and was not arbitrarily or capriciously applied by the Mesa County Assessor. The Board finds Mr. Henderson's procedure to be thorough and that the Assessor's office had made numerous attempts to compel Petitioner to provide a declaration or other documentation supporting the value of the subject property. Petitioner admits it did not file a declaration schedule and did not follow the protest procedure set forth in CRS section 39-5-122(2). Therefore, Petitioner may not seek an abatement/refund of the BIA assessment assigned in the 2007 NOV.

With respect to the 2007 SNOV, the Board is convinced by the testimony and evidence presented by both parties that the increase in value between the 2007 NOV and the 2007 SNOV was not due to omitted property.

When adding omitted property valuation after the statutory close of the assessment period . . . care must be exercised to distinguish the difference between truly omitted property and an undervaluation . . . If a value had been placed on the property and the taxpayer received a Notice of Valuation, and it is later discovered that the property has a greater value, the property has been undervalued and the value cannot be increased.

2 Assessor's Reference Library: Administrative and Assessment Procedures 3.22 (2006). In 2006, Mr. Henderson lowered the quality classification assigned to the personal property to reflect the first use exemption. This lower classification was not changed prior to sending the 2007 NOV. The Board finds that the 2007 SNOV covered the same property as the 2007 NOV, but the increase in value was due to an increase in quality classification, to remove the first use exemption reduction applied by Mr. Henderson in 2006.

Since the Board finds the 2007 SNOV was not issued to account for omitted personal property but instead issued to address an undervaluation, the Assessor could not increase the value, and Petitioner was entitled to an abatement/refund for 2007, relating to the change in value from the 2007 NOV to the 2007 SNOV.

ORDER:

Respondent is ordered to approve that part of the tax year 2007 abatement application submitted by the Mesa County Board of Commissioners relating to the change in value from the 2007 NOV to the 2007 SNOV.

The Mesa County Assessor is directed to change her records to reflect a 2007 actual value for the subject property of \$2,265,564.00.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

CRS § 39-10-114.5(2) (2008).

DATED and MAILED this 10th day of April 2009.

BOARD OF ASSESSMENT APPEALS

Diane M DeVries

Diane M. DeVries

Sondra W. Mercier

Sondra W. Mercier

This decision was put on the record

APR 10 2009

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

H. Flannery

Heather Flannery

